against incumbrances is generally regarded as a covenant *in praesenti* broken, if at all, when made. *Ladd v. Noyes,* 137 Mass. 151; *Richard v. Bent,* 59 Ill. 38; *McPike v. Heaton,* 131 Cal. 109; *Hasselbusch v. Mohmking,* 76 N. J. L. 691. Consequently, in many states only the immediate grantee can recover for a breach of such covenant. *Ladd v. Noyes, supra; McPike v. Heaton, supra.* But in states allowing the assignment of a chose in action it has been held that a remote grantee may sue. *Geiszler v. DeGraaf,* 166 N. Y. 339 (departing from the earlier rule in the state); *Tucker v. McArthur,* 103 Ga. 409; *Schofield v. Iowa Homestead Co.,* 32 Iowa 317. The same result follows where there is a direct enactment that the chose in action shall go with the land. *Prescott v. Hobbs,* 30 Me. 345. Rawle suggests that even without the aid of statute the remote grantee should be able to sue as equitable assignee. RAWLE, COVENANTS, § 226. The English view is that the covenant, though nominally broken at the moment of its creation, has a continuing breach until actual damage has been suffered, and being primarily in the nature of an indemnity, runs with the land. *Kingdon v. Nottle,* 4 Maule and Selw. 53. A few American states have followed this rule. *Foote v. Burnet,* 10 Ohio 327; *Exrs. of McCrady ads. Brisbane,* 1 Nott. & McC. (S. C.) *104; *Coleman v. Lyman,* 42 Ind. 289; see also *Schofield v. Iowa Homestead Co., supra.* The English theory of continuing breach was severely criticised as being ingenious but of no substantial import, in *Mitchell v Warner,* 5 Conn. 497, and Chancellor Kent favored the chose in action theory which the principal case illustrates. 4 COM. 472.

CRIMES—ALLEGATION AND PROOF OF FORMAL MATTERS,—At a trial for murder the evidence tended to show that the homicide was committed "near West Green," a village near the boundary of the county in which the case was tried. On appeal by the defendant from conviction, *held,* that venue was not sufficiently proven to establish the jurisdiction of the county court. *Taylor v. State* (Georgia, 1922), 113 S. E. 147. In an Alabama case the defendant was indicted for the violation of a prohibition law that took effect January 25, 1919. The indictment failed to allege the date of the offense, or that it occurred subsequent to the statute which changed it from a misdemeanor to a felony. The refusal of the lower court to charge that it was therefore fatally defective, *held,* error. *Hammons v. State* (Ala. 1922), 92 So. 914.

Both Georgia and Alabama are code states. No authorities of date more recent than the code of procedure adopted in 1910 are cited by the Georgia court for its strict adherence to the common law rule requiring venue to be proved precisely as a material fact. Numerous late cases under the prohibition statute in Alabama, themselves based expressly on the Constitution of 1901, Section 7, which provided that "no person shall be punished but by virtue of a law established and promulgated prior to the offense and legally applied," are the authority for the decision of the court of that state in the principal case. But the ambiguity that was the basis of the earlier decisions did not exist in the record of the Alabama case, since the

indictment was found at least two years after the statute became effective. Both cases are supported by earlier decisions within their respective states. But it can be argued that after the parties have gone to trial and the jury, without previous objection from counsel, has submitted a verdict establishing the defendant's guilt, the court should allow a certain presumption that the venue was well proven or that the act was an offense against an established statute. Such, apparently, is the weight of American authority. CORPUS JURIS, Criminal Law, § 1572. The result would be to place the burden of objection on the defendant to a certain extent, but the insistence of the courts in the principal cases on the clarity of the record is apparently inconsistent with the spirit of code practice and clearly offers to the convicted criminal an additional avenue of escape on purely technical grounds.

CRIMES—PERJURY—CONTRADICTORY STATEMENTS ACCOMPANIED BY ADMISSION.—The defendant was convicted of perjury alleged to have been committed by falsely swearing at a preliminary hearing before a magistrate. It appears that at the preliminary hearing he testified as to certain facts and on the trial of the case he testified that his previous testimony was false. *Held,* on appeal, that defendant's contradictory testimony, accompanied by a definite admission that his testimony as previously given was false, was not sufficient to support a conviction of perjury. *State v. Burns* (S. C., 1922), 113 S. E. 351.

The rule is now well established that a conviction for perjury cannot be sustained merely on the contradictory sworn statements of the defendant, but the state must prove which of the two statements is false and must show that statement to be false by other evidence than the contradictory statement. *State v. Binkley,* 123 Ark. 240; *Billingsley v. State,* 49 Tex. Cr. P. 620; *Paytes v. State,* 137 Tenn. 129; *People v. McClintic,* 193 Mich. 589. The reason for this rule seems to be that it is not possible to tell which is the true and which is the false statement. *Schwartz v. Com.* 27 Gratt. (Va.) 1025. *A fortiori,* one cannot be convicted upon proof of a contradictory statement made by him, not under oath. *State v. Hunter,* 181 Mo. 316; *State v. Buckley,* 18 Ore. 228; *Miles v. State,* 73 Tex. Cr. R. 493. Because of the solemnity of the oath, credit should be given to the sworn statement rather than to the unsworn statement. The only American case holding contrary to the general rule is *People v. Burden* (N. Y.), 9 Barb. 467, a case similar on its facts to the principal case, in which the court held that when a defendant has made contradictory statements under oath, and in the second he has acknowledged the intentional falsity of the first, that acknowledgment is sufficient to establish the perjury of the first without further evidence. In criticising this *Burden* case, the court in *Schwartz v. Com., supra,* said that "the acknowledgment that the first statement was untrue may itself be false, and we place no confidence in either statement, from an absolute inability to determine which is true, or whether either is true." But it seems that where two sworn contradictory statements are made by the same person, it may with certainty be concluded